IN THE HIGH COURT OF JUDICATURE AT BOMBAY

I AND J JURISDICTION

NOTICE OF MOTION NO. 2939 OF 2001
IN
TESTAMENTARY SUIT NO. 42 OF 1999
IN
PETITION NO. 1003 OF 1997

Mr. Rajendra D. Vaidya .....Plffs.
vs.
Mrs. Suvarna Pandurang Vaidya.....Defnds.
and
The Secretary,
Home Department, Govt.
of Maharashtra and Ors. ....Resp.

M.C. Dixit for the petitioner.

K.K. Jadhav for the respondents.

CORAM: S.U. KAMDAR, J.

DATE : 8TH JULY, 2005.

P.C. :

1. The present notice of motion has been taken out for initiating action under o.39 r.2A as well as for striking off the defence o. 39 R.11 of the Civil Procedure Code. Further orders are sought for appointment of the Court Receiver. The entire

proceedings proceeds on a footing that the defendant no.1 has committed breach of the order passed by this court dated 25.6.1998 and a further order dated 28.11.2001 The order dated 28.11.2001 has been passed in the present notice of motion. In view of the complaint of the applicant that the respondent no.1 has inducted third party into the premises in breach of the injunction order this court by an order dated 3.7.2003 directed the Court Receiver to visit the premises and make a report. The Court Receiver has thereafter visited the premises on 4.7.2003 and 4.8.2003. The Court Receiver has made a report that on his visit respondent no.1 was found in possession of the premises and was conducting the business of milk shop with the help of one Altaf Hussain. The Court Receiver also found that the Board of the court receiver has been properly displayed on the said premises. Learned counsel appearing for the applicant is unable to show that the respondent no.1 has parted with the possession of the said premises as he has inducted as third party. He merely relies upon two complaints made by him to

the police which are also annexed to the affidavit in support of chamber summons. In view of the report of the Court Receiver it is not possible to accept the contention of the petitioner that the respondent no.1 has committed breach of any order. In view thereof motion dismissed. No order as to costs.

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